hotel was built in the shape shown on A1. If this were the case, it would indicate, as the approval of the Planning Authorities had not by October 1957 been obtained for the plan A1, that construction of the hotel started later than that date.

If a firm decision had been reached to build a hotel on the site and of the shape shown on the plan A3, it is difficult to understand why the architect should show a hotel of a different shape and on a different site on the plan A1. If no firm decision had been needed as to the shape or size of the hotel, it would indeed be odd if by October 1957 the construction of the hotel had proceeded very far and the time it took to complete the hotel makes it improbable that on that date construction had so far proceeded that the only reasonable course to follow was to complete it.

Their Lordships see no reason to reject the conclusions of the Court of Appeal that on the 11th October construction had not started. Nor do they see any reason to reject the other findings of the learned Chief Justice. Ong J. expressed the opinion that the swimming pool and recreation ground could not be carved out of the hotel land. If the building of extras had not been started, it would have been possible to revert to the layout shown on plan A2 which contains a swimming pool. If building operations had started for a hotel of the shape shown on the plan A1, it is apparent that provision could have been made for a swimming bath on the area coloured pink.

The Chief Justice said "It is clear, however, that a swimming pool of some sort could have been provided on the hotel land." Their Lordships see no reason to question this statement.

If the provision of the recreational facilities such as were contemplated on the acquired land, were of such importance to the hotel, one would have expected the appellants, if such facilities could not be provided in an adequate degree on the hotel land, to have endeavoured to secure other land for that purpose. No evidence was given that any such attempt was made. Mrs. Pereira, who owns some land adjoining the hotel land, testified that in August 1957 the appellants sought to buy the land. She decided not to sell but undertook to give them the first offer if she sold her land in future. The appellants made no approach to her after the acquisition.

The Court of Appeal unanimously rejected the award made by Ong J. The appellants have failed to satisfy their Lordships' Board that they were wrong in so doing.

The appellants' claim was based initially on a rental difference of 15,000 dollars a month. That was not accepted by the Court. They did not accept that 35,000 dollars was a reasonable rent for the hotel. The appellants produced no evidence which established a reasonable rent in excess of 35,000 dollars. Such evidence as there was pointed to a rent in execess of 44,880 dollars a month.

It was for the appellants to establish that they had suffered damage in the diminution of the value of the hotel land due to severance. Their Lordships agree with the majority of the Court of Appeal that the appellants have failed to prove that they suffered any such damage.

Their Lordships will, therefore, report to the Head of the Federation of Malaya their opinion that this appeal should be dismissed and that the appellants should pay the costs of this appeal.

Appeal mismissed.

Solicitors: *Coward Chance & Co.; Wray Smith & Co.*

NG ENG HIAM v. NG KEE WEI & ORS.

[C.A. (Thomson C.J., Hill and Syed Sheh Barakbah JJ.A.) December 3, 1962]

[K.L. — Companies (Winding-up) No. 2 of 1961]

Company Law — Private company — Strained relationship between directors — Whether just and equitable to order winding-up — Principles to be applied — Companies Ordinance, 1940, s.166(6).

The appellant and the 2nd respondent were the subscribers to a company with a fully paid up capital of $1,000,000 divided into 1,000 shares of $1,000 each. Each of them, with members of their respective families, holds 50% of the shares. The Articles of Association provided that the management and control of the company should be equally divided between the two subscribers who became the permanent directors. There was no provision for the appointment of a third director, nor any arbitration clause. In May 1957, the general manager of the company and eldest son of the 2nd respondent asked for a special bonus for services rendered by him but was opposed by the appellant. In September 1957, the 1st and 2nd respondents gave a contract for selling timber to a third party without the appellant's knowledge. These two incidents led to a strained relationship between the appellant and the 2nd respondent which resulted in minor incidents such as the removal of the company books to another office. In the circumstances, the appellant made an application for the winding-up of the company on the ground that it is just and equitable that it should be wound up. In the court below, the learned judge dismissed the application. On appeal,

Held: (1) the parties had not reached such a state of complete deadlock that it would be impossible to carry on the business any longer;

(2) since there was no allegation of dishonesty, inefficiency misconduct or failure to keep proper accounts, it was not just and equitable that the company should be wound up.

Decision of Ong J. *sub nomine Re Semantan Estate (1952) Ltd.* [1962] M.L.J. 285 affirmed.

Cases referred to:—

(1) *In re Yenidje Tobacco Co. Ltd.* [1916] 2 Ch. 426.

(2) *Loch* v. *John Blackwood, Ltd.* [1924] A.C. 783, 788.

(3) *Anglo-Continental Produce Co. Ltd.* [1939] 1 All E.R. 99.

(4) *Bleriot Manufacturin- Air-craft Co. Ltd.* 32 T.L.R. 253-5.

(5) *Davis & Co. Ltd.* v. *Brunswick (Australia) Ltd. Brunswicke-Balke-Collendor Co. and Brunswick Radio Corporation* [1936] 1 All E.R. 299.
(6) *American Pioneer Leather Co. Ltd.* [1918] 1 Ch. 556.
(7) *Atwood* v. *Maude* 3 Ch. App. 373.
(8) *Maxwell* v. *Kuen & Ors.* [1928] 1 K.B. 645.
(9) *Davis and Collatt Ltd.* [1935] 1 Ch. 693.
(10) *Bondi Better Bananas Ltd. Vallarie et al* v. *Bondi et al.* [1952] 1 D.L.R. 277.

COURT OF APPEAL.

R. Ramani (*Robert K. C. Hoh* with him) for the appellant.

C. H. Smith (*R. R. Chelliah* with him) for 1st — 10th respondents.

11th respondent in person.

Cur. Adv. Vult.

Thomson C.J.: The facts of this case are sufficiently set out in the judgment of Ong J. in the Court below and in the judgment of Hill J.A. which I have had the advantage of reading.

The application for winding up was made under section 166(6) of the Companies Ordinance, 1940, which provides that a company may be wound up by the Court if "the Court is of opinion that it is just and equitable that the company should be wound up".

In the case of *In re Yenidje Tobacco Company, Limited*[1] it was held that where, as here, there is an association which is in substance a partnership, though in the guise of a private company, the corresponding provision contained in section 129 of the Companies (Consolidation) Act, 1908, should be applied on the same principles as in a case of dissolution of partnership.

Again, it is to be observed there is no general rule to be applied as to when it is just and equitable that there should be a compulsory winding up. In the case of *Loch* v. *John Blackwood, Limited*[2] Lord Shaw of Dunfermline referred to what should be the point of view of the Court in a consideration of the justice and equity of pronouncing an order for winding up and said:—

> "Such a consideration, in their Lordships' view, ought to proceed upon a sound induction of all the facts of the case."

In the case of any company one must look at the Articles of Association to ascertain the understanding between the members on the basis of which they have entered into their relationship as such. When one peruses these in the case of this company the most striking point that emerges is that not only has control of the company been equally divided between the two families, so to speak, but the detailed provisions as regards the management of the company are such as to make the resolution of any difference between the two permanent directors a matter of virtual impossibility. There is no provision for the appointment of a third permanent director. There is no arbitration clause. Distribution of the shares provides for complete equality. In other words, there is no provision for a domestic forum in which differences can be determined without the necessity for an application to the Court.

One corollary to this is clearly that both permanent directors undertook to display a more than usual forbearance and tolerance of each other's point of view in relation to the affairs of the company. Complete and constant unanimity between any two human minds, at least as regards the management of a business, is a virtual impossibility. Differences of opinion there must be and always will be, the two protagonists in the present dispute are but human and the inference that each of them undertook to place some restraint on the old Adam is inescapable. It is in the light of these considerations that I think we must approach the facts.

Turning to the facts, these have been sufficiently discussed in detail. On the affidavits, upon which there was no cross-examination, it must be accepted that the only causes for the differences between the two permanent directors were the incident of the second respondent's son asking for extra remuneration, which he did not get, and the incident of the timber contract, the respondent's explanation of which has not been denied. It may be, as argued by Mr. Smith, that the appellant has some other reason for wanting the company wound up. It may be a good reason but it has not been disclosed and so we are bound to take it that it does not exist. And if the appellant allowed the two incidents of which we have heard so much to lead him to a state of mind when he thought, no doubt in perfect good faith, that co-operation between himself and his fellow permanent director was impossible then he was failing in the obligation to exercise tolerance and forbearance which he had undertaken.

It is not necessary to consider whether there have been minor technical breaches of the company law. What is remarkable is that there is no suggestion that the company is not making money; there is no suggestion that it would make more money if the permanent directors were on speaking terms; there is no question of what has been called its sub-stratum being gone; there is no suggestion that its business cannot be or is not being carried on and indeed efficiently carried on; there is no suggestion of the slightest lack of probity or of either side seeking to obtain an unfair advantage over the other or make an unfair profit or anything of the sort. (See *Anglo-Continental Produce Co. Ltd.*[3]).

In the circumstances I fail to see any reason why it should be regarded as "just and equitable" that the appellant should have his way and have the company wound up. Still less do I see any reason for interfering with the discretion of Ong J. which seems to be based, to quote the

phrase of Lord Shaw, "upon sound induction of all the facts of the case".

I would accordingly dismiss the appeal with costs.

Hill J.A.: This is an appeal against the decision of Ong J. dismissing the appellant's petition to wind up a private company known as The Semantan Estate (1952) Limited.

The company was incorporated in May 1952, with a fully paid-up capital of $1,000,000 divided into 1,000 shares of $1,000 each. The objects of the company were to carry on business as rubber planters and estate owners. The subscribers to the Memorandum of Association were Ng Eng Hiam, the petitioner, and Ng Chin Siu, both prominent landowners of Kuala Lumpur. Each of them, with members of their respective families, holds 50 per cent of the shares. It had been agreed that the petitioner and Ng Chin Siu should have equal rights of management and voting powers. The articles of association were accordingly so drawn up that they, the heads of each family became permanent directors but the Chairman was disentitled to a further or casting vote, while restrictions placed on the transfer of shares further ensured parity of voting strength at all times, except in the event of a member or members of one family defecting to the other, which has not yet occurred in the history of the company.

Between 1952 and 1956 the company acquired three rubber estates totalling a little over 4,500 acres, which it still owns, save for a portion of one, the Batu Estate, in Kuala Lumpur, which had been acquired by the Government. The company has been highly successful in its operations. The appellant and the 2nd respondent Ng Chin Siu are the sole directors and the Articles of Association provide for their equal share in the management of the company.

From 1952 to 1957 there appears to have been no trouble but in 1957 differences arose between the appellant and Ng Chin Siu which finally resulted in these proceedings.

No oral evidence was taken at the hearing of the petition, both parties relying on affidavits and these affidavits give me the impression that they conceal more than they reveal and I cannot avoid the impression that the petitioner's purpose or objects in seeking a dissolution are likely to be more cogent, and perhaps graver and more realistic, than the ones put forward.

Be that as it may, two matters, as pointed out by Ong J. brought things to a head. First, at a meeting of the Board of Directors on May 24, 1957, Ng Kee Wei, the general manager of the company and eldest son of Ng Chin Siu, claimed a special bonus for services alleged to have been rendered by him in connection with proceedings relating to the acquisition by Government of part of the Batu Estate, which claim the petitioner had felt constrained to oppose. Second, in or about September, 1957, a contract had been given by Ng Chin Siu and Ng Kee Wei without the petitioner's knowledge to one Ng Choon Chiau for felling jungle trees on Semantan Estate on terms said to be less favourable than those offered by another contractor, Goh Chew Yik, who had been introduced earlier to the company by the petitioner, and it was alleged that the petitioner had not been able to ascertain the circumstances or the precise terms on which the contract had been given out. These two differences which Ong J. regarded as of a trivial nature, led to strained relationshin between the two directors and to further dissension which gave rise to additional reasons in support of the petition. They are to be found in paragraphs 17, 18, 19 and 20 of the petition. These statements were verified by an affidavit of the petitioner and I do not think it is necessary to set them out nor to refer in any great detail to the contra-affidavit by the 1st respondent Ng Kee Wei which traversed the petitioner's and explained certain circumstances, but it will be necessary to refer later in this judgment to certain specific instances of differences.

In his judgment Ong J. wrote *inter alia:*

> "In dismissing the petition at the conclusion of the hearing, I had been and still am, clearly of the opinion that the two matters which arose in 1957 were the root cause of all the ensuing friction,"

and again

> "I shall pass over these two matters by only saying very briefly, that Ng Chin Siu and Ng Kee Wei had both tacitly acknowledged their want of tact over the matter of the special bonus by dropping the claim, and that, in regard to the jungle-felling contract, had the petitioner condescended to make any genuine attempt to find out whether or not the fancied insult was intended, he could readily have satisfied himself that his allegations of 'considerable loss' suffered by the company were exaggerated.
>
> After careful consideration of the affidavits on both sides, I find that all the subsequent complaints by the petitioner flowed from nothing more substantial than pique which he felt over the events of 1957. There were no grounds which could justify what was tantamount to an ultimatum. vide the last paragraph in the letter of April 12, 1958, exhibited to the petitioner's affidavit of December 5, 1961 and marked 'NEH — 1'."

The learned Judge considered "with great care" *In re Yenidje Tobacco Company Ltd.*[1] and the statement at page 692 of *Lindley* on Partnership (11th Ed.) that

> "It must be borne in mind that the Court will never permit a partner by ..... rendering it impossible for his partners to act in harmony with him, to obtain a dissolution on the ground of the impossibility so created by himself."

Ong J. was not satisfied that it was "just and equitable" that he should make the order that was sought. He felt that the company could carry on with advantage and profit to all its shareholders and for that reason he dismissed the petition with costs.

It seems to me that this Court must now endeavour from the available evidence, chiefly the affidavits, to decide whether such a deadlock

had been reached that in the circumstances it was just and equitable in the interest of all concerned that a winding up order should be made in respect of this domestic company.

For the appellant/petitioner it was Mr. Ramani's contention that a true position of deadlock had been established and that the business of the company was now functioning in a manner contrary to the Articles of Association. He urged that there was no possibility of any reconciliation and that the Court should not unduly concern itself with the cause of the deadlock, which was not of any real relevance, but look to the future and foresee that the business could not be continued as contemplated by the Articles.

In support of his argument Mr. Ramani referred to section 166 of the Companies Ordinance and cited the following authorities: *Bleriot Manufacturing Air-craft Company Ltd.;*[4] *Davis & Co. Ltd.* v. *Brunswick (Australia) Ltd. Brunswicke-Balke-Collendor Co. and Brunswick Radio Corporation;*[5] *Yenidje Tobacco Co. Ltd.;*[1] *Loch* v. *John Blackwood, Ltd.;*[2] *American Pioneer Leather Co. Ltd.;*[6] *Anglo-Continental Produce Co. Ltd.*[3]

Mr. Ramani further submitted that though no reference to partnership law was necessary the petitioner was entitled to relief even if the company, as a domestic company, was regarded as a partnership and he referred to:

(i) Ordinance No. 14 of 1950 section 207.
(ii) *Pollock's* Commentary 14th Ed. 91.
(iii) *Lindley* 11th Ed. 690.
(iv) *Atwood* v. *Maude* [7].

For the respondents Mr. Smith dealt with various details in the affidavits and the correspondence and his main argument was that there was really only one deadlock and that was shall the company be wound up, which he claimed was what the petitioner had wanted for years. Mr. Smith pointed out that meetings had been held by way of circulars, that the Manager, appointed by both directors in 1952, conducted the business and that while the two directors must act together they do not do the actual work of management which was delegated to the manager in 1952. He pointed out that there are no allegations against the respondents, except perhaps in respect of the timber contract which he claimed had been satisfactorily explained. Mr. Smith submitted that in accordance with section 169 of the Companies Ordinance the Court's power was purely discretionary and that this Court should not interfere with the discretion exercised by Ong J. Mr. Smith cited: *Maxwell* v. *Kuen & Ors.;*[8] *Anglo-Continental Produce Co. Ltd.*[3]

Finally Mr. Smith referred to the interests of the other shareholders and cited *Davis and Collatt Ltd.*[9]

I will now endeavour to deal with the petitioner's complaints which formed the grounds for his petition and the replies thereto.

I can attach little importance to the 1st respondent's application for a bonus in connexion with the acquisition proceedings. The petitioner objected, the application was dropped and no bonus has ever been drawn. No cause for dissension remains.

The respondent next complained and I quote his own words from paragraph 15 of his petition:

> " ..... in or about September, 1957, the said Ng Chin Siu and Ng Kee Wei, without the knowledge or consent of your petitioner, authorised a contractor to fell jungle trees on the Semantan estate subject to payment of royalty which was very much lower than the royalty agreed to be paid by another contractor who had been introduced to the company by your petitioner, as a result of which the company has suffered considerable loss. Your petitioner has not yet been able to ascertain the circumstances in which or the precise terms on which this contract for felling timber was given out."

To this complaint Ng Kee Wei replied as follows in paragraph 8 of his affidavit.

> " With regard to the allegation contained in paragraph 15 of the petition which concerns the felling of jungle trees I say that the contractor engaged was the person nominated by the internal visiting agent. The difference in the price was due solely to three factors:
>
> (a) a drop in the price of timber as the contract was made about eight months after the contractor nominated by the petitioner came forward;
>
> (b) the contractor undertook to construct a road for the estate use;
>
> (c) the contractor nominated by the petitioner failed to sign a contract and stopped payment of the cheque which he had given as a deposit.
>
> Full information concerning this contract for felling trees is and always has been available to the petitioner at the company's office."

Perhaps the only comment I can make on this explanation is that it appears reasonable and should have, on the face of it, satisfied the petitioner.

On 12th April 1958 the petitioner wrote to the Secretaries and ended his letter as follows:—

> " It is obvious from the above that there is not the trust and congeniality between the directors that is so essential in the running of a business of a company as this one. It is quite clear that the events are leading towards a deadlock between the directors and no business in the full sense of that word can be carried on by the company.
>
> In the circumstances therefore unless the company be voluntarily wound up, I regret that I may have to take whatever action that I may deem necessary."

There is perhaps one further letter by the petitioner to which I should refer. It was dated 30th December 1958, and a copy appears at page 149 of the record. The Secretaries were obviously anxious to have a meeting before the end of the year and had written the petitioner to that effect. He was hardly co-operative when he replied "How is there sufficient time to give the required notice to call a General Meeting before the end of the year?" A few phone calls could have gathered a quorum together at short notice.

The events which the petitioner claimed then to be leading to a deadlock would appear to have been certainly due in part to a lack of congeniality, but I can find no justification for a lack of trust. Congeniality is probably essential between partners who, say, are solicitous, but as between directors of a rubber estate it seems no more than desirable. However, the petitioner's dissatisfaction arose, in addition to the two main causes stated above, from matters which, when regarded singly, appear to me to be inconsequential and which when considered *in toto* appear to have been reasonably explained by the first respondent.

In the main the petitioner's further grounds were that meetings had not been held, that he had not been furnished with accounts and estimates, that the respective families have not been on speaking terms since early 1958, that sales of rubber had been effected by the manager without his knowledge and that the books of the company had been moved from No. 19 Ampang Road, which is the registered office of the company, to No. 21 Ampang Road where he could not inspect them because of the ill-feeling and the fact that the front door of No. 21 was kept closed. It appears that Nos. 19 and 21 are adjoining premises and comprise the residence of Ng Chin Siu and his family. It is not unusual for front doors to be kept closed in Kuala Lumpur and the petitioner does not claim that he was ever refused admission.

To these grounds the first respondent has replied that meetings were held by way of circular, that the petitioner was in fact furnished with all accounts and estimates, that some members of the two families are on speaking terms, that as manager it is his duty to conduct the affairs of the company and though it is not denied that the books are kept in No. 21 it is claimed that they have always been available to the petitioner for inspection and that no discourtesy has ever been offered him.

From these "differences" Mr. Ramani contended that three irregularities resulted in the functioning of the company contrary to Articles 85, 86 and 107 of the Articles of Association and, with regard to the removal of the books, to section 122 of the Companies Ordinance.

When I compare the differences between Ng Eng Hiam and Ng Chin Siu with those that led the Courts in the cases I have referred to to hold that there was such a deadlock that made a winding up order just and equitable, the inadequacy of the grounds on which the petitioner seeks the dissolution of this prosperous family concern, becomes very apparent. A dissolution, moreover, that is against the wish of the surviving respondents and there is, further, no evidence that it receives the whole-hearted support of all members of the petitioner's family.

In my view the irregularity in regard to section 122 of the Ordinance is so very technical in the circumstances that it should be ignored.

In my view too the question of irregularities against the Articles do not fall for consideration by this Court at this stage as they appear to me to be outside the scope of the real issue "is there a deadlock" due to the differences between the two directors.

I refer specially to the proceedings of the Annual Meeting held on 27th May 1961, a copy of the minutes of which appear at page 22 *et seq* of the record and in particular to the entry of the Chairman with regard to petitioner's request for a poll.

Much was made of the *Yenidje Tobacco Company* case, but when one compares the differences that have arisen between Mr. Ng Eng Hiam and Mr. Ng Chin Siu with those that arose between Mr. Weinberge and Mr. Rothman the former pale into insignificance.

In re *Bondi Better Bananas Ltd. Vallame et al* v. *Bondi et al*[10] the Ontario Court of Appeal held (see the head note) that "the principles governing the dissolution of partnerships apply to equally controlled private companies whereby they are to be wound up where there is such continued quarrelling and animosity as precludes all reasonable hope of reconciliation and friendly co-operation". In applying these principles with which I respectfully agree, to the present case I do not consider that a stage of such continued quarrelling and animosity has yet been reached between the petitioner and the 2nd respondent and there seems to be reasonable hope of reconciliation and co-operation if ordinary good sense is employed.

I have come to the conclusion therefore that this is not an instance where a winding up order would be just and equitable and that Ong J. properly exercised his discretion in refusing to make such an order.

I would therefore dismiss this appeal with costs here and in the Court below.

Barakbah J.A.: I have had the advantage of reading the draft judgment of Hill J.A. and I agree entirely with the reasons he gives for dismissing the appeal. I will only add very shortly my reasons for arriving at the same conclusion.

I need not recapitulate the facts. They have been fully stated by Ong J. in the Court below and by Hill J.A.

The petition was presented by the appellant under section 166(6) of the Companies Ordinance 1940 for an order that it was "just and equitable" that the company be wound up, and the evidence adduced at the hearing was by way of affidavits only.

After perusing the affidavits of both parties there is no doubt that there were some quarrelling and dissatisfaition between the appellant and Ng Chin Sui but in my opinion they were not as serious as the appellant had made them out to be.

In his judgment Hill J.A. had considered the various authorities referred to by Mr. Ramani, counsel for the appellant and I am of the opinion, after careful study of these cases, that the general principle underlying these authorities was that the parties had reached such a state of complete deadlock that it would be impossible to carry on the business any longer. In the present case there was no allegation of dishonesty, inefficiency, misconduct or failure to keep proper accounts. It is true there were some differences between the two directors but to my mind they were not such as would cause complete deadlock that it would be impossible to carry on the business any longer. This is a family concern and I feel that it would not be impossible for them to resolve their differences and carry on with the spirit of co-operation that had existed from 1952 to 1957. The company is in a flourishing condition and in all the circumstances of the case, it appears that it will not be in the interest of the several shareholders to have the business wound up. I therefore agree with Hill J.A. that the appeal should be dismissed with costs here and in the Court below.

Appeal dismissed.

Solicitors: *Eugene Lye & Hoh; R. R. Chelliah.*

NATIONAL UNION OF PLANTATION WORKERS & ORS. v. ABDUL HAMID

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) December 10, 1962]

[Kota Bharu — F.M. Civil Appeal No. 33 of 1962]

Trade Unions — Publication of libel by servant of trade union at "Sangamani Press", the property of the union — Writ issued against trade union, servant and press — Whether trade union liable for tort of servant — Trade Unions Ordinance, 1959, s.22.

Libel and Slander — Trade union — Publication of libel by servant of trade union in union newspaper — Whether union liable in tort.

Practice and Procedure — Application to strike off writ — O.25.

On February 3, 1961 the 3rd appellant as agent and servant of the 1st appellant published in a newspaper known as the "Sangamani" certain matters defamatory of the respondent. The newspaper was printed at "Sangamani Press" which was the property of the 1st appellant. On April 24, 1962, the respondent issued a writ for libel against the 1st appellant, the "Sangamani Press" *eo nomine* and Perumal who are the 2nd and 3rd appellants respectively. The appellants applied under O.25 to have the action struck out on the ground that it was incompetent. The learned judge dismissed the application; the appellants appealed.

Held: (1) under the provisions of the Trade Unions Ordinance, 1959, a trade union is liable to be sued for torts arising from ownership of property and not otherwise;

(2) the liability in the present case arose from the relationship of master and servant and not from the ownership of property and therefore, the 1st appellant is not liable to be sued;

(3) the 3rd appellant is answerable for his own torts.

Per curiam: Under the existing law, a trade union is not liable for any tortious act where its liability is founded on the principle of vicarious liability.

Cases referred to:—

(1) *National Union of Plantation Workers* v. *K. Annamalai* [1959] M.L.J. 9.

(2) *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* [1901] A.C. 426.

(3) *Vacher & Sons Ltd.* v. *London Society of Compositors* [1913] A.C. 107, 112.

(4) *Citizens' Life Assurance Company* v. *Brown* [1904] A.C. 423, 426.

(5) *Barnard* v. *Sully* 47 T.L.R. 657.

(6) *Turbervil* v. *Stamp* (1697) Comb. 459.

(7) *Bussy Amalgamated Society of Railway Servants & Bell* (1908) 24 T.L.R. 437.

COURT OF APPEAL.

R. Ramani for the appellants.

H. L. Wrigglesworth for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This appeal arises out of a libel action which is pending in the High Court at Kota Bharu.

For the purposes of the appeal the facts must be taken to be as claimed by the plaintiff, that is to say as follows:

On 3rd February, 1961, there was published in a newspaper known as the "Sangamani", which circulates throughout the Federation, certain matters which constituted a libel on the present respondent. This newspaper is the property of the National Union of Plantation Workers which is a registered trade union and is published on its behalf by a Mr. Perumal and is printed at what is known as the "Sangamani Press" which is the property of the union. There is no suggestion that the publication was in any way connected with a trade dispute.

The plaintiff, who is the respondent to the present appeal, issued a writ for libel on 24th April, 1962. He joined as defendants the union, the "Sangamani Press", *eo nomine,* and Mr. Perumal.

The defendants applied under Order 25 to have the action struck out on the ground that it was incompetent by reason of section 22 of the Trade Unions Ordinance, 1959. That application was dismissed by Mr. Justice Hashim and against that decision the defendants have now appealed.

Unfortunately His Lordship has been somewhat reticent as to the course of reasoning which led to his decision. He referred to the case of the *National Union of Plantation Workers*